

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

JUL 21 1993

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable
 Television Consumer Protection
 and Competition Act of 1992)

Rate Regulation)

MM Docket No. 92-266

EIA/CEG RESPONSE TO PETITIONS FOR RECONSIDERATION

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby responds to various petitions for reconsideration seeking amendment of the Commission's Report and Order establishing rate regulation rules for cable companies.¹ The rate regulation rules were adopted pursuant to the Commission's authority under the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act").² EIA/CEG's primary interest in these rules relates to the treatment of in-home equipment and associated wiring. EIA/CEG also takes an interest in one proposal relating to the incentives of cable operators to provide cable subscribers with simultaneous access to multiple descrambled channels.

Numerous filings from the cable industry seek to weaken the Commission's rules regarding the regulation of converters, remote controls, and connections for

1/ Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket No. 92-266, FCC 93-177 (released May 3, 1993) ("Order").

2/ Pub.L. No. 102-385, 106 Stat. 1460 (1992) ("Cable Act").

No. of Copies rec'd
 List A B C D E

CH 9

additional outlets.³ There are proposals to exempt small cable systems from the requirement that charges for equipment be unbundled from charges for basic cable service,⁴ to allow equipment to be bundled with cable programming services, either at a minimally or wholly unregulated price,⁵ to exempt equipment primarily used for unregulated services but also used incidentally for basic service from regulation on the basis of actual costs,⁶ to exempt additional outlet charges from rate regulation,⁷ to exempt from regulation any cable company-provided equipment of a type which is also

3/ Like the Commission, we use the term "converters" to include devices that are sometimes referred to by different names, including those "that act as an extended tuner for subscribers who do not have a cable-ready television, those boxes that descramble a signal, and addressable boxes." Order at 170 n.641.

4/ Petition for Reconsideration of the Coalition of Small System Operators, MM Docket No. 92-266, at 16-17 (filed June 21, 1993). [Hereinafter all petitions for reconsideration filed in this round of the proceeding are cited simply as "Petition of ____."]

5/ See, e.g., Petition of Baraff, Koerner, Olender & Hochberg, P.C. ("Baraff") at 9 (a customer choosing to subscribe to cable programming services does so outside the "rate enforcement capabilities" of the FCC or the franchising authority); Petition of Cablevision Systems Corporation ("Cablevision") at 11 (cable operators should be permitted to bundle so long as the price for the final package is "not unreasonable"); Petition of Encore Media Corporation ("Encore") at 9-10 (equipment may be bundled but must also be available on an unbundled basis).

6/ See, e.g., Petition of Blade Communications, Inc. ("Blade") at 3-4; Petition of

provided on a competitive basis by non-cable sources,⁸ and to increase the permissible rate of return on equipment provided subject to "actual cost" regulation.⁹ EIA/CEG opposes all of these proposals.

For the most part, the petitions for reconsideration repeat arguments presented in response to the Commission's Notice of Proposed Rulemaking in this proceeding.¹⁰ These arguments have been fully considered and properly resolved. To a large extent, the petitioners' quarrel is with the Congress, not the Commission; collateral attacks in a regulatory forum must not be permitted to weaken the goals of this carefully crafted consumer protection legislation.¹¹ The consumer protection aspects of rate regulation of in-home equipment, already important today, may become even more so in light of cable industry plans for the deployment of increasingly complicated and expensive converter boxes.¹²

^{8/} See, e.g., Petition of Baraff at 7-8 (because the regulated price offered by the cable operator would be "artificially low," the development of a competitive market might be impeded in areas where equipment is currently being sold by other vendors); Petition of Continental Cablevision, Inc. ("Continental") at 16-17 (FCC should deregulate "nonaddressable converters and associated remote control devices for which universal remotes are substitutable").

^{9/} See, e.g., Petition of Booth American et al. at 25 (11.25 percent rate of return for costs in the equipment basket is "arbitrary and capricious"); and Petition of NCTA at 29-30.

^{10/} See, e.g., Petition of NCTA at 26-27 n.41 (quoting at length from previous filing for the proposition that the FCC should limit what type of equipment is subject to actual cost regulation).

^{11/} For example, one cable operator admits that its current charge for additional outlets is more than ten times what it would be under the Commission's cost-based approach. See Petition of Blade at 4 (noting that Blade's current monthly price for additional outlets is \$2.50, while under the Commission's formula the price the system could charge is \$0.24).

^{12/} See S. Scully, Cable Converters Entering New Era, Broadcasting & Cable, June 14, 1993, at 79 (describing new converter boxes that may cost from \$125 to \$200); see also R. Brandt, et al., Boob Tube No More, Business Week, June 7, 1993, at 100 (stating that new digital cable converters will cost approximately \$200 to \$300 apiece, about twice as much as current cable boxes).

Moreover, despite cable operator assertions that they will be greatly burdened by the Commission's rate regulation rules, statements by accounting experts suggest that the rules provide cable operators with a worrisome degree of flexibility. One accountant for the cable industry has stated that, due to the inherent ambiguities in the allocation of costs in accounting, it may be possible to determine the market price "which we can get customers to pay" and then make cost allocations that justify that price.¹³ According to this accountant, "[t]here is enough ambiguity in the rules so that we can get the numbers to justify the result."¹⁴

As we observed earlier in this proceeding, it is important that the Commission's decisions in this proceeding be made with full appreciation of the cable-consumer electronics compatibility issues arising under Section 17 of the Cable Act. Those issues are pending in a related proceeding, ET Docket No. 93-7. In that proceeding, an advisory group comprised of representatives of both the cable and consumer electronics industries has, after months of discussions, recently agreed to present joint regulatory recommendations to the Commission.¹⁵

Certain aspects of the joint recommendations are germane to this proceeding. The Advisory Group is proposing that the Commission require sets marketed as "cable-ready" to incorporate a "decoder interface."¹⁶ Rate regulation is necessary to ensure

^{13/} G. Foisie, Cable Rereg Gets Bottom-Line Treatment, Broadcasting & Cable, May 24, 1993, at 61.

^{14/} Id.

^{15/} The "Supplemental Comments of the Cable-Consumer Electronics Advisory Group" are expected to be filed this week in ET Docket No. 93-7.

^{16/} A necessary precondition for development of receivers incorporating the interface is the prescription of standards for digital transmissions, and, later, digital compression and a standard security interface system.

that consumers receive an economic benefit when, by purchasing a "cable-ready" set, they enable the cable operator to provide a simple decoder instead of a more complicated converter. Also, to provide a more substantial immediate offset for the increased costs inherent in a "cable-ready" set, the Advisory Group is advocating that the Commission require cable companies to waive installation fees for the first decoder -- but not converter -- in each home.¹⁷

Those issues need not be fully resolved in the reconsideration phase of the rate regulation proceeding. It is, however, imperative that no action be taken at this time which would preclude the Commission from adopting the joint recommendations in the compatibility proceeding or otherwise undermining the compatibility goals of Section 17 of the Cable Act. Thus, for example, the Commission should be wary of proposals that would grant cable operators unrestrained flexibility to offer equipment and installations below cost, and to recover those costs through equipment and installation charges imposed on other subscribers.¹⁸ Adoption of such proposals would enable cable operators to do precisely the opposite of what the Advisory Group has recommended that the Commission require them to do. And it would be inconsistent with the congressional intent that in-home equipment provided by cable companies be priced on the basis of actual costs.¹⁹

^{17/} In the view of EIA/CEG, the Commission should also permit cable operators to waive the installation fees for additional decoders (but not converters) in the home.

^{18/} See, e.g., Petition of Continental at 12-13; Petition of NCTA at 28-29; and Petition of Viacom International, Inc. at 16 (stating the FCC should include promotion costs as part of equipment charges).

^{19/} Cable Act, Section 3 (§623(b)(3) of the Communications Act).

There is one additional related point concerning the interplay between the two proceedings. In the course of the compatibility debate, the consumer electronics industry strenuously advocated the use of "consumer-friendly" approaches to signal delivery that do not ration consumers to use of a single channel at a time.²⁰ Where multiple signals are available, such as in a broadcast environment or in the absence of a converter box, consumers can more easily use advanced picture display features (such as picture-in-picture), watch one program while taping another, and sequentially tape programs on two different channels. The cable industry, however, has fervently argued that there are various reasons why traps and interdiction are not always attractive options and that it is often not practical to simultaneously deliver multiple signals, in the clear, to subscribers.

Although we understand the cable industry's concerns in this area, we continue to believe that regulatory actions can and should be taken to create incentives to stimulate more affirmative consideration of approaches that provide for such in-the-clear access. Multichannel Communication Sciences, Inc. has offered a specific proposal in this regard,²¹ and this proposal is not inconsistent with the Advisory Group's recommendation because it would not require in-the-clear delivery. We encourage the Commission to consider carefully whether this or some similar measure might help to promote development and deployment of more consumer-friendly

^{20/} See, e.g., Comments of the Consumer Electronics Group of the Electronic Industries Association, ET Docket No. 93-7, at 28-31 (filed Mar. 22, 1993).

^{21/} Petition of Multichannel Communication Sciences, Inc. ("Multichannel") at 2 and 6 (urging the Commission to adopt an additional benchmark increment for cable programming service tiers provided to subscribers as "Simultaneously Clear Addressable Tiered Services," which would be offered by operators on a voluntary basis).


technologies, thereby reducing the risk that consumers will increasingly be saddled with the expenses and complications resulting from use of converters.


We appreciate the opportunity to present our views in this proceeding. The Commission has done an outstanding job of implementing the rate regulation provisions of the Cable Act, in particular by requiring the unbundling and careful regulation of all in-home equipment used in conjunction with basic cable service. We urge the

Commission to deny proposals that would undermine earlier decisions in this area, encourage the Commission to consider compatibility issues as rate regulation rules are reviewed, and ask the Commission to seriously entertain proposals to create economic incentives that promote consumer-friendly signal delivery methods.

Respectfully submitted,

CONSUMER ELECTRONICS GROUP
ELECTRONIC INDUSTRIES ASSOCIATION

By: 
Barbara N. McLennan
Staff Vice President
Government and Legal Affairs

By: 
George A. Hanover
Staff Vice President
Engineering

2001 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 457-4900

Of Counsel:

James L. Casserly
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Post Office Box 407
Washington, D.C. 20044
(202) 626-6600

July 21, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Response to Petitions for Reconsideration of the Electronic Industries Association" was served this 21st day of July 1993, by first class, postage prepaid mail, to:

Charles S. Walsh
Seth A. Davidson
Mark J. O'Connor
Fleishman and Walsh
Suite 600
1400 Sixteenth Street, N.W.
Washington, D.C. 20036

Philip L. Verveer
Sue D. Blumenfeld
Willkie, Farr & Gallagher
Suite 600
1155 21st Street, N.W.
Washington, D.C. 20036

Brenda L. Fox
Dow, Lohnes & Albertson
Suite 500
1255 23rd Street, N.W.
Washington, D.C. 20037

Paul Glist
Cole, Raywid & Braverman
Suite 200
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Richard E. Wiley
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Ron D. Katznelson, Ph. D.
5910 Pacific Center Boulevard
San Diego, CA 92121

James E. Meyers
Baraff, Koerner, Olender & Hochberg, P.C.
Suite 300
5335 Wisconsin Avenue, N.W.
Washington, D.C. 20015-2003

John I. Davis
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

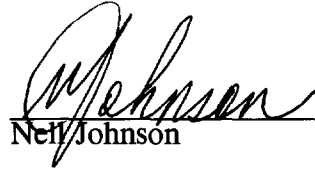
Howard J. Symons
Leslie B. Calandro
Mintz, Levin, Cohn, Ferris, Glovsky &
Popeo, P.C.
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Gardner F. Gillespie
Jacqueline P. Cleary
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Daniel L. Brenner
Michael S. Schooler
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Donna C. Gregg
Michael Baker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Mark J. Palchick
Baraff, Koerner, Olender & Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Washington, D.C. 20015



Neil Johnson